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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re DAVID W., a Person Coming Under
the Juvenile Court Law.

B267550

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES et al.,

(Los Angeles County
Super. Ct. No. DK12613)

Plaintiffs and Respondents,

v.

DAVID W.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Veronica
McBeth, Judge. Affirmed as modified.

Ernesto Paz Rey, under appointment by the Court of Appeal, for Defendant and
Appellant.

Megan Turkat Schirn, under appointment by the Court of Appeal, for Plaintiff and
Respondent Mother, E.W.

No appearance for Plaintiff and Respondent Department of Children and Family
Services.

David W. (father) appeals from a restraining order requiring him to stay away from E.W. (mother) and their son, David W., except during monitored visitation, contending insufficient evidence supports inclusion of the child as a protected person. Mother urges that we affirm the order in its entirety. Respondent Los Angeles County Department of Children and Family Services (DCFS or the department) did not request the order and took no position below on mother's request for it. For reasons discussed below, we reverse the portion of the order naming David W. as a protected person.

BACKGROUND

This family came to the department's attention when mother was arrested for striking father on the head with his cell phone in an incident that was later found to be self-defense. Subsequent investigations revealed father, age 39, an Army recruiter, married mother four days after she turned 18 years old. David W. was born five months later. Father was prone to severe bouts of anger, drank excessively every day—frequently to the point of blacking out—and physically abused mother from a month before they married until 10 months into their marriage. He would hit, kick, and choke her and push her into a closet, at times causing her to bleed. Father frequently threatened to seek to have the juvenile court remove David W. from mother's custody and told David W.'s maternal grandmother that mother would go to prison.

There is no evidence David W. was ever present when domestic violence occurred, and the child appeared to be comfortable in father's care during visitation and was by all accounts well cared for and developmentally on target.

The juvenile court sustained the department's Welfare and Institutions Code section 300 petition alleging father's abuse of mother and ordered reunification services, including an alcohol program and monitored visitation for father. The court also granted mother's request for a restraining order enjoining father to stay away from mother, the family home, and David W., except during visitation.

Father timely appealed the order.

DISCUSSION

Father contends the evidence was insufficient to list David W. as a protected person in the restraining order. He does not challenge those portions of the order naming mother as a protected person or requiring him to stay away from the family home, where mother and the child live.

A juvenile court may issue an order “enjoining any person from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, . . . contacting, . . . or disturbing the peace of [a] child” or the child’s parent. (Welf. & Inst. Code, § 213.5, subd. (a).) The order may be issued any time failure to do so may jeopardize a child’s physical safety. (*In re B.S.* (2009) 172 Cal.App.4th 183, 194.)

In reviewing a restraining order, “we view the evidence in a light most favorable to the respondent, and indulge all legitimate and reasonable inferences to uphold the juvenile court’s determination. If there is substantial evidence supporting the order, the court’s issuance of the restraining order may not be disturbed.” (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 210-211.)

Here, no evidence indicated failure to issue a restraining order might jeopardize David W.’s physical safety. There was no report that father engaged in any violent or otherwise inappropriate conduct when the child was present and no indication there was a reasonable possibility would do so in the future. There was likewise no evidence father’s alcoholism endangered the child. On the contrary, the child showed no signs of neglect and appeared to be comfortable in father’s care during visitation. The juvenile court therefore erred in listing David W. as a protected person in the order.

Mother argues father frequently “threatened” to ask the juvenile court to remove David W. from her custody and told the maternal grandmother that mother would go to prison. But threats of legal action against a parent have no potential to physically endanger a child.

Mother argues father lacks credibility because in the dependency proceedings he repeatedly denied his spousal abuse, alcoholism, and inappropriate behavior. Lack of credibility during dependency proceedings does not endanger a child.

Mother argues domestic abuse in the home poses a risk of danger to children residing in the home whether or not they are present during the abuse. But here, father does not reside in the home and has been ordered to stay away from it.

Mother argues father has a severe alcohol problem and anger issues, and lacks impulse control, all of which may endanger David W. Even were we to conclude such a danger exists, the disposition order requiring monitored visitation for father alleviates the danger.

We conclude insufficient evidence supports the inclusion of David W. as a protected person under the restraining order.

DISPOSITION

The juvenile court is ordered to modify the August 26, 2015 restraining order by deleting the name of David W. from the list of protected persons. In all other respects the restraining order is affirmed.

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CHANNEY, Acting P. J.

WE CONCUR:

JOHNSON, J.

LUI, J.